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CRIMINAL LAW PROTECTION OF BUSINESS ACTIVITIES: INTERNATIONAL EXPERIENCE

Crime in the sphere of business activity becomes more and more problem and menacing phenomenon for Ukraine as for the independent, independent and sovereign state. For a long time, imperfect economic relations are used by criminals to provide significant own material revenues through corruption, legalization by "laundering" money obtained by criminal means, engaging in prohibited economic activities, direct attacks on all forms of property and the commission of other crimes of an economic nature. Of course, such actions should not and do not remain without a proper response from the State, they oblige its law enforcement agencies to combat them [1, p. 41].

This complex crime situation requires the development of a set of scientifically sound measures aimed at ensuring the normal functioning of entrepreneurship and countering crimes committed in this area.

Thus, the criminal law of foreign States, as well as the criminal law of Ukraine, implements criminal law regulation of business activities. This is largely due to the need to ensure the economic security of the State, compliance with the ban on the penetration of criminal proceeds into the legitimate sector of the economy. The peculiarities of criminal law protection of business activities in the criminal law of foreign States are determined by the model of the economic system and the legal regulation of economic relations in the State.

The closest criminal law methods of regulating business activities in the states-former republics of the USSR. In these countries criminal liability for hindrance of lawful business activity is established.

Perception by legislators of these states of the ideas put in the Model criminal code adopted at the seventh plenary session of Inter-parliamentary Assembly of the State Parties of the Commonwealth of Independent States (resolution № 7-5 of 17.02.1996) became the reason for that.

Let's note that in the majority of criminal codes of the states – the former republics of the USSR responsibility for preventing of lawful business activity is established in sections on crimes in the sphere of economic activity: Article 190 UK of the Azerbaijan Republic, Article 187 of UK of the Republic of Armenia, Article 232 of UK of Republic of Belarus, Article 190 of UK of Georgia,

Article 178 of UK of the Kyrgyz Republic, Article 258 of UK of the Republic of Tajikistan, Article 238 of UK of Turkmenistan.

The Criminal Code of the Republic of Uzbekistan contains norms providing for liability for crimes related to obstruction of business activity, illegal interference in business activity, and other crimes infringing on the rights and legitimate interests of economic entities [2].

Of course, crimes related to the obstruction of business activities and illegal interference in business activities in the Criminal Code of the Republic of Uzbekistan should be attributed to: Violation of the procedure for carrying out inspections and audits of financial and economic activities of business entities (Art. 192.2), illegal suspension of activities of business entities and/or transactions on their bank accounts (Art. 192.3), forced involvement of business entities in charity and other measures (Art. 192.4), violation of the licensing law and the law on permitting procedures (Art. 192.5), unlawful refusal, non-use or obstruction of benefits and preferences (Art. 192.6), unjustified delay in issuing funds to economic entities and other organizations (Art. 192.7), illegal claim of information on availability of funds in accounts of business entities (art. 19 2.8) [2].

A more correct and accurate definition of the public danger of the crimes under investigation is the location of v. 365 of the Criminal Code of the Republic of Kazakhstan, which provides for liability for obstruction of legitimate business activities, in the section «Corruption and other criminal offences against the interests of the public service and public administration».

The Criminal Code of the People's Republic of China does not criminalize obstruction of legitimate business activities. However in Article 403 UK Chinese the People's Republic is established responsibility of public servants of governing bodies, from mercenary motives, abusing office powers, claimed or registered according to the statement for registration of creation of the company which does not conform to requirements of the law [3, p. 270].

In the studied criminal laws of the countries of Europe, including the Baltic States, Latvia, Lithuania and Estonia [4, p. 17], there are no rules on criminal liability for obstruction of business activities by officials.

The exception makes UK of the Republic of Bulgaria where in St. To the two hundred eighty second the Section II «Malfeasances» of chapter of the eighth Special part of «Crime against activity of public authorities and public organizations» it is established responsibility of the official for refusal in delivery or delivery with violation of the terms of special permission to implementation of a certain activity established by the law [5, p. 201-202].

The Criminal Code of Spain provides for liability for opposition to business activities by other economic entities. Such attacks should include the seizure of raw materials or essential goods for the purpose of changing prices or causing significant damage to consumers (art. 281), the use of exclusive information to distort competitive prices (art. 284), crimes against the interests of associations (chap. XIII) [6, p. 90-94].

In the criminal legislation of the Federal Republic of Germany (hereinafter referred to as the Federal Republic of Germany), offences related to bankruptcy (§ 283, 282 «a», 283 «c», 283 «d» of the Federal Criminal Code of

Germany) are recognized as an infringement of business activity, as well as restrictions on competition agreement when writing off goods (§ 298 of the Federal Criminal Code) [8, p. 159-166].

In the French Penal Code, offences that infringe on business activities are provided for in Book Three, «On Property Offences and Misdemeanours». These include business fraud (art. 313-1, 313-2) and artificial insolvency (art. 314-7, 314-8) [7, p. 305].

It should be noted that the criminal law of foreign States provides for liability for crimes that form illegal business activities. In the majority of criminal codes of the states – the former republics of the USSR criminal liability for illegal business activity and for separate types of crime, relating to illegal business is established. The experience of the legislator of the States – former republics of the USSR in establishing criminal liability for illegal entrepreneurship can be very useful for improving the Ukrainian criminal legislation in the part under study.

Article 372 of the Estonian Penal Code provides for liability for carrying out economic activities in an area subject to a special prohibition or prohibition of carrying out economic activities on the basis of the Law on the General Part of the Code on Economic Activities, as well as for carrying out activities without a permit for activities in the area where a licence is required. The qualifying characteristics of this crime in paragraph 2 of the article include acts: 1) which have caused danger to the life or health of many persons; 2) committed in the sphere of activities related to the provision of medical services, handling of infectious materials, aviation, railway traffic or the provision of credit, insurance or financial services.

The subject of the crime is also recognized as a legal entity (pp. 3 and 4 of the article under study). The Estonian Penal Code also provides for liability for certain types of prohibited economic activities: illegal trafficking in alcohol (art. 375), violation of the procedure for trafficking in tobacco products (art. 376), illegal removal of additives from liquid fuel subjected to special marking and trafficking in liquid fuel obtained as a result (art. 376.1), illegal trafficking in liquid fuel (art. 376.2).

Criminal liability for illegal entrepreneurship in Part 1 of Article 207 of the Criminal Code of the Republic of Latvia [10]

- 1) for doing business without registration;
- 2) without special permission (license) if need of it is established by the law;
- 3) continuation of the enterprise activity after the order to suspend its activity, if such actions are committed repeatedly within a year.

Thus, in Part 1 of Article 207 of the Criminal Code of the Republic of Latvia, the composition of illegal entrepreneurship is defined as formal with alternative actions. At the same time, administrative prelude is one of the characteristics of this offence. The qualifying circumstance of illegal business under Part 2 of Article 207 of the Criminal Code of the Republic of Latvia is to cause substantial harm to the State or to the rights and interests of the person protected by law. Also in UK of the Republic of Latvia it is established responsibility for the banned business activity (Article 208) and fictitious business activity (Article 209) [10].

In the criminal legislation of Europe, the regulation of liability for illegal entrepreneurship differs significantly from the domestic one. According to T.D. Ustinova, in the developed countries of Europe and the USA there is no criminal liability for illegal business activity, is carried out without compliance with the relevant regulations set out in other branches of law, as in these countries there is a long-standing and established other legal mechanism, which includes economic levers and a well-developed system of civil and financial and tax legislation.

This position of the author should be accepted only in part, since, despite the existence in the legal systems of foreign States of a «well-developed system of civil and financial and tax legislation», criminal law is applied in extreme cases where the means of other branches of law are insufficient to prevent any wrongful act.

For example, the Criminal Code of the Republic of Bulgaria provides for liability for certain acts constituting illegal business activities. Under article 226 of the Criminal Code of the Republic of Bulgaria, liability is incurred if the perpetrator is used by a State, cooperative or other public organization to engage in private business activities in violation of established provisions and to obtain significant illegal income.

Article 234a of the Criminal Code of the Republic of Bulgaria provides for liability for engaging in foreign trade activities without a permit required by law or by a decree of the Council of Ministers, or in violation of such a permit. Article 252 of the Criminal Code of the Republic of Bulgaria provides for liability for carrying out banking, insurance or other financial transactions without the appropriate permission (par. 1) or carrying out a banking transaction in violation of the established rules (par. 3).

The offence provided for in paragraphs 1 and 3 of this article is a formal offence. In Subparagraph 2 of Article 252 UK of the Republic of Bulgaria is established responsibility for commission of the actions specified in Subparagraph 1 of article if as a result of commission of this crime the significant damage was caused or considerable illegal income is gained. Article 235, paragraph 2, of the Criminal Code of the Republic of Bulgaria provides for liability for concealment, sale or transport of illegally extracted timber by another person.

In such states as France, Germany, Japan, Denmark, Sweden, Holland, Poland, Spain, Italy, is established criminal liability for illegal business activity [9, p. 43].

Thus, the criminal legal protection of business activities in foreign States is determined by the peculiarities of legislative equipment, historical development and the level of development of the economy of the State. In those States where business activities are developed (former republics of the USSR, countries of Eastern Europe), liability is provided for both obstruction of business and other economic activities and for the conduct of business activities in violation of the procedures of control over such activities by the State. The experience of criminal law protection of business activities of these states, in our opinion, is the most useful for improvement of criminal legislation of Russia at present. In States where business has long been an organic part of

the economy, criminal law protection of business is carried out through the application of general rules on economic and official offences.

The experience of the United States in combating business crime shows this. In that State, the legislative definition of the legalization of criminal proceeds had been expanded and it was now an offence to carry out the transaction itself with funds of doubtful origin, regardless of the fact that the main offence had been proved. Criminal liability for money laundering in the USA is established both at the federal level, and in each separate state. The separate responsibility of establishing and for the so-called «structuring» is to distribute a large amount of money into small amounts in order to avoid checks by the administration. Such activities are considered as misleading in order to conceal suspicious transactions [11, p. 33].

Since the legalization of proceeds of crime consists in any transaction of money, the opposition to legalization lies primarily in the tracking of cash and non-cash flows. One of the most effective ways to track cash flows is to monitor payments. To date, the United States has two of the most common forms of settlement – checks and credit cards. Both forms of settlements pass through the federal reserve system and the central bank, which monitor payments using checks and credit cards. America's anti-money-laundering strategy cannot be described as slender and rational. Despite legislative innovations, it cannot be said that the federal government has reached the opportunity to track all illegal transactions with money of doubtful origin. In addition, the issue of cooperation between law enforcement and control agencies is unresolved. Thus, in the strategy of the American government to combat the legalization of criminal proceeds, 10-12 different federal agencies are responsible for various directions of its implementation, and the mechanism of their cooperation has not been worked out [12, p. 283].

An important aspect of international cooperation is the exchange of information between the relevant authorities and services involved in the investigation of tax offences. All documents and other information are transmitted only during personal meetings. Even the best domestic laws in the field of counteracting legalization cannot be sufficiently effective without the availability of appropriate instruments of international cooperation.

According to UK experience in the field of counteracting the legalization of criminal proceeds, each bank of an authorized employee responsible for compliance with the requirements of banking legislation in the field of counteracting the legalization of criminal proceeds. Each year, an authorized employee must undergo retraining in new legislation, means and methods of counteracting this area. A bank employee who has not taken appropriate measures to counter money laundering shall be liable under criminal law [13, p. 153].

Considering the foreign experience of the countries of the world, it is worth noting that today the forms of international cooperation in the fight against crime are very diverse and include: assistance in criminal, civil and family cases; signings and implementation of international treaties and coordination (arrangements) on fight against crime and, first of all, with transnational crime; Enforcement of decisions of foreign law enforcement agencies in criminal and civil cases; Regulating criminal matters and individual rights in the

area of law enforcement; Exchange of information is of mutual interest to law enforcement agencies; Joint crime research and development; Exchange of law enforcement experience; Assistance in training and retraining; Mutual provision of logistical and advisory assistance [14, p. 80].

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Summary

Ardelyan T. O. Criminal law protection of business activities: international experience. – Article.

This article explores foreign experience of public administration in organizing law enforcement activities, including criminal law protection of business activities, because such crime has serious consequences for any society, about the way to improve and develop the system of law enforcement agencies, about research of own experience and, at the same time, to turn to the experience of scientists of other countries in this field.

A more correct and accurate definition of the public danger of the crimes under investigation is the location of v. 365 of the Criminal Code of the Republic of Kazakhstan, which provides for liability for obstruction of legitimate business activities, in the section «Corruption and other criminal offences against the interests of the public service and public administration».

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An important aspect of international cooperation is the exchange of information between the relevant authorities and services involved in the investigation of tax offences. All documents and other information are transmitted only during personal meetings. Even the best domestic laws in the field of counteracting legalization cannot be sufficiently effective without the availability of appropriate instruments of international cooperation.

Key words: crime, law enforcement agencies, legalization of funds obtained by criminal means, business activity, criminal law.

А н о т а ц і я

Арделян Т. О. Кримінальна законна захист діяльності бізнесу: міжнародний досвід. – Стаття.

Ця стаття досліджує зарубіжний досвід державного управління в організації правоохоронної діяльності, включаючи кримінально-правовий захист підприємницької діяльності, оскільки такий злочин має серйозні наслідки для будь-якого суспільства, щодо шляхів вдосконалення та розвитку системи правоохоронних органів, про дослідження власного досвіду і водночас звернутися до досвіду вчених інших країн у цій галузі.

Більш правильним і точним визначенням суспільної небезпеки злочинів, що розслідуються, є місцезнаходження п. 365 Кримінального кодексу Республіки Казахстан, яке передбачає відповідальність за перешкодження законній підприємницькій діяльності, у розділі «Корупція та ін. кримінальні правопорушення проти інтересів державної служби та державного управління».

Слід зазначити, що кримінальне законодавство зарубіжних держав передбачає відповідальність за злочини, які утворюють незаконну підприємницьку діяльність. У більшості кримінальних кодексів держав - колишніх республік СРСР встановлена кримінальна відповідальність за незаконну підприємницьку діяльність та за окремі види злочинів, що стосуються незаконного бізнесу. Досвід законодавця держав - колишніх республік СРСР щодо встановлення кримінальної відповідальності за нелегальне підприємництво може бути дуже корисним для вдосконалення кримінального законодавства України в досліджуваній частині.

Важливим аспектом міжнародного співробітництва є обмін інформацією між відповідними органами та службами, які беруть участь у розслідуванні податкових правопорушень. Вся документація та інша інформація передається лише під час особистих зустрічей. Навіть найкращі внутрішні закони у сфері протидії легалізації не можуть бути достатньо ефективними без наявності відповідних інструментів міжнародного співробітництва.

Ключові слова: злочинність, правоохоронні органи, легалізація коштів, одержаних злочинним шляхом, ділова діяльність, кримінальне право.